IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

WP(C).No. 22058 of 2005(A)

IA.NO.641/2005 IN OS.117/2001 of SUB COURT, ATTINGAL

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PETITIONER:

ABDUL SHUKOOR, RIYAZ MANZIL,
THANNIRKONAM, PERUNGUZHY,
THIRUVANANTHAPURAM DIST.

BY ADV. SRI.M.R.RAJESH

RESPONDENT:

APPU, S/O.KUNJUSANKARAN, KODIYIL VEEDU,
PERUMKUZHY, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.L.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 22058/05

PETITIONER'S EXHIBITS:

EXT. P1	**TRUE COPY OF IA 641/05 IN OS117/01 ON THE FILE OF THE SUB COURT, ATTINGAL**
EXT. P2	**TRUE COPY OF OBJECTION FILED BY THE PETITIONER TO EXT. P1**
EXT. P3	**TRUE COPY OF ORDER DT. 23.3.05 PASSED ON EXT. P1 PETITION**
EXT. P4	**TRUE COPY OF IA 931/05 IN OS 117/01 ON THE FILE OF THE SUB COURT, ATTINGAL.**
EXT. P5	**TRUE COPY OF OBJECTION FILED BY THE PETITIONER TO EXT.P4**
EXT. P6	**TRUE COPY OF ORDER DT. 16.7.05 PASSED ON EXT.P4 PETITION**

/TRUE COPY/

K.P. Balachandran, J.

W.P.(C)No. 22058 of 2005 A

JUDGMENT

The petitioner is the defendant in O.S.No. 117/01 on the file of the Sub Court, Attingal. The suit is for recovery of money, on the basis of two dishonoured cheques, Exhibits A2 and A3 in the said suit, which according to the respondent/plaintiff, were being issued to him by the petitioner/ defendant in 2001. The petitioner/defendant contended that Exhibits A2 and A3 cheques were issued by him to one Abdul Vahid during 1994 when he borrowed amount from the said person and then he had only written the amounts and signed in the said two cheques and had not written the name of the payee nor had he dated those cheques. It is his case that the name of the payee and the date in Exhibits A2 and A3 cheques were being inserted by the respondent/plaintiff, obtaining those cheques

from Abdul Vahid some how or other. According to the petitioner, himself, respondent and the said Abdul Vahid were friends and were working in Gulf during 1994 and it was then that the transaction occurred and Exhibits A2 and A3 cheques were also being given by him to Abdul Vahid. It is for the above reasons that he prayed for Exhibits A2 and A3 cheques being forwarded to an expert for getting opinion as to whether the writing of the amounts and the signatures were not being written during 1994. Exhibit P1 is the application filed in that behalf.

2. Going by the pleadings of the parties, if the contentions set up by the petitioner/defendant is true, the signature and the writing of the amounts, both in figures and words, must have been written by him in his own handwriting during 1994 and not in any subsequent year. All the same, going by the pleadings of the respondent/plaintiff, the aforesaid writings as also the writing of the

payee's name and the dating of the cheque could only have been in 2001 and in the handwriting of the petitioner/defendant himself. It is only appropriate, in the circumstances, that Exhibits A2 and A3 cheques produced in O.S.No.117/01 on the file of the Sub Court, Attingal are forwarded to an expert selected by the court below from a panel of experts suggested by either side to examine the said cheques and furnish report as to whether the writings as regards the amounts in figures and words and the signatures in Exhibits A2 and A3 are those written in 1994 and the other writings, including the dating of the cheques were made thereafter, viz., in 2001 and also as to whether the handwritings in writing the payee's name as also the dating of the cheques are of the person, who has affixed signatures and has filled up the amounts both in figures and words in Exhibits A2 and A3 cheques. The expenses for obtaining an expert opinion will have to be met by the

petitioner/defendant himself. The reason for rejecting I.A.No.641/05 filed by the petitioner/ defendant in the court below, as stated in Exhibit P3 order, is that it is filed at a very belated stage and with an intention to protract the proceedings and that if the petitioner/defendant wanted an expert opinion to be got down, he should have done it before enlisting the case for trial in the special list. Exhibit P3 order was passed by the court below as early as on 23.3.2005. Evidence in the case was also closed on 23.3.2005 itself and the case was posted for arguments to 28.3.2005. However, it is seen that hearing of the case was adjourned to 31.3.2005, on which date, the respondent/plaintiff filed I.A.No.740/05 to re-open the case for evidence and that was dismissed as not pressed after two months on 31.5.2005. That petition was being so got dismissed on 31.5.2005, after having filed Exhibit P4 for the same relief on 30.5.2005. Though the petitioner objected to

Exhibit P4 petition being allowed by filing Exhibit P5 objection, the court below, vide Exhibit P6 order, allowed Exhibit P4 petition on 16.7.2005, after one and a half months on payment of cost of Rupees one thousand. The court below, which showed eagerness to dispose of the case by refusing to allow Exhibit P1 petition, adjourned the case on several occasions and finally, after four and a half months, ordered the case to be re-opened for evidence on the application of the respondent/ plaintiff, enabling to cure the defect of non-examination of the plaintiff. It is only appropriate, in the circumstances, that an opportunity is given to the petitioner/defendant to adduce evidence to substantiate his contentions, allowing Exhibits A2 and A3 cheques being forwarded for expert opinion, as stated above.

In the result, allowing this writ petition, I set aside exhibit P3 order and direct the court below to forward Exhibits A2 and A3 cheques for

expert opinion to an expert selected by him from the list of experts that may be filed by either side. The expenses thereof shall be borne by the petitioner/defendant. The matters on which the expert will have to furnish report will be on the following points:

i. Whether the writing of the amounts both in figures and words and the affixing of signatures in Exhibits A2 and A3 were as early as in 1994 and the writing of the payee's name and dating of the cheques were long thereafter in 2001.

ii. Whether the writing of the payee's name and the dating in Exhibits A2 and A3 cheques are by the same person, who has affixed signatures therein.

iii. Whether the writing of the payee's name and dating in Exhibits A2 and A3 cheques are in the

same handwriting, as that of the writing of the amounts in figures and words.

The parties shall co-operate in the matter of depositing the expenses as ordered by the court below; in giving panel of experts and in complying with any further direction, which the expert may desire to have, but under intimation to court and on directions of court, to enable proper examination of Exhibits A2 and A3, so that the suit itself can be disposed of as expeditiously as possible, expediting the trial.

1st March, 2007 (K.P.Balachandran, Judge)

tkv